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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/014,838

10/26/2001

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EXAMINER

FULTON, CHRISTOPHER W

ART UNIT

PAPER NUMBER

2859

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Please find below and/or attached an Office communication concerning this application or proceeding.



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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 14

Application Number: 10/014,838
Filing Date: October 26, 2001
Appellant(s): BOLLE, BARBARA J.

James M. Deimen
For Appellant

EXAMINER'S ANSWER

MAILED

OCT 22 2003

GROUP 2800

This is in response to the appeal brief filed September 2, 2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-8 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

765,611	Carr	7-1904
1,515,398	Marcussen	11-1924

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr in view of Marcussen.

The device as claimed is substantially disclosed by Carr with a device having a scale that extends from the bottom of the inside of a bottle to measure the amount of liquid in the bottle, but lacks the gauge body having a bottom that corresponds to the bottom of the bottle, the edge of the device being shaped the same as the bottle with a corresponding scale to determine the amount of liquid in a specialty shaped bottle, and a plurality of devices for different shaped bottles.

Marcussen teaches using a hand held gauge that is place along the side of a bottle and does not support the bottle to provide a quick and accurate measurement of the bottles contents without moving the bottle to place it on a gauge. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the gauge of Carr a hand held gauge to be placed along the side of the bottle as taught by Marcussen for a quick and accurate measurement of the bottles contents without moving the bottle to place it on a gauge. Since the scale of Carr starts with the bottom of the inside of the bottle and takes into account the thickness of the bottom of the bottle this would necessitate a gauge starting at the bottom of the bottle with the scale starting at the inside of the bottom of the bottle.

Marcussen also teaches using a device that is shaped the same as the bottle to be measured with a corresponding scale to determine the amount of liquid in the specially shaped bottle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of Carr shaped the same as the bottle to be measured with the corresponding scale as taught by Marcussen to determine the amount of liquid in the specially shaped bottle.

Duplication of existing parts is not considered patentably distinct. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have a plurality of gauges of the combination of Carr and Marcussen for various bottles as a mere duplication of specific type of gauge.

Claims 2, 3, 6, and 7 stand and fall with claims 1, 4, 5, and 8 rejected above.

(11) Response to Argument

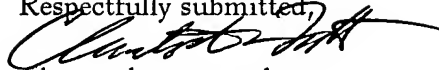
Applicant's arguments filed September 2, 2003 with respect to issue 1 concerning claims 1, 4, 5, and 8 have been fully considered but they are not persuasive. The argument that the base reference of Carr does not teach a gauge that has a bottom that corresponds to the bottom of the bottle is not persuasive because Carr does disclose the concept of starting the scale at the bottom of the inside of the bottle by taking into account the thickness of the bottles bottom and when taken in combination with the teaching reference of Marcussen as stated in the rejections recited above produce the claimed device. The argument that the combination would produce a gauge that measures from the top down is not persuasive since the scales orientation is from the base reference of Carr and not the teaching reference of Marcussen. The teaching reference is used to teach an independent gauge that is not connected to a base member and a contoured gauge that conforms to a bottle and not the orientation of the scale itself.

For the above reasons, it is believed that the rejections should be sustained.

Application/Control Number: 10/014,838
Art Unit: 2859

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Respectfully submitted,



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Primary Examiner
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CWF
October 16, 2003

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